

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:SF:POSTF-121992-02
HCBonney

date: JUL 22 2002

to: Leo Lew, TEFRA Coordinator

from: H. CLIFTON BONNEY, JR.
Attorney (LMSB)

subject: [REDACTED]'s [REDACTED] and [REDACTED] Tax Years
Assessment of Partnership Items
I.R.C. Section 6229(a)
[REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, is subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This advice relies on facts provided by you to our office. If you find that any facts are incorrect, please advise us immediately so that we may modify and correct this advice. This advice is subject to 10-day post review by the National Office. CCDM 35.3.19.4. Accordingly, we request that you do not act on this advice until we have advised you of the National Office's comments, if any, concerning this advice.

20291

ISSUES

1. Whether the Form 872-A "Special Consent To Extend Time To Assess Tax" executed by the Service and [REDACTED] during the course of the Service's audit of [REDACTED] s [REDACTED] and [REDACTED] Forms 1120 extends the statute of limitations under I.R.C. Section 6229(a) with respect to partnership items.

2. Whether the statute of limitations under I.R.C. Section 6229(a) remains open as a result of it being suspended under I.R.C. Section 6229(d).

RECOMMENDATION

1. The Form 872-A "Special Consent to Extend the Time to Assess Tax" executed by the Service and [REDACTED] in the course of the Service's audit of [REDACTED] s [REDACTED] and [REDACTED] Forms 1120 does not extend the statute of limitations with respect to partnership items under I.R.C. Section 6229(a).

2. The statute of limitations under I.R.C. Section 6229(a) may remain open if there was any time remaining on the 6229(a) statute prior to it being suspended under I.R.C. Section 6229(d).

FACTS

In [REDACTED], the Service was auditing [REDACTED] s [REDACTED] and [REDACTED] Forms 1120. On [REDACTED], the Service and [REDACTED] executed a Form 872-A "Special Consent to Extend the Time to Assess Tax" extending the assessment period for [REDACTED] s [REDACTED] and [REDACTED] tax years indefinitely.¹ The consent restricted the audit to two issues. The first issue involved the method for allocating income-based state income and franchise taxes between domestic source gross income and foreign source gross income. The second issue involved the amount of foreign tax credit [REDACTED] was entitled to for taxes paid or accrued to [REDACTED]. Neither issue was related to [REDACTED] s interest in any partnership.

Simultaneously with the above audit, the Service was auditing [REDACTED] and [REDACTED] Forms 1065. [REDACTED] is a partnership governed by the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). [REDACTED] was the tax matters partner of [REDACTED]. During [REDACTED] and [REDACTED] [REDACTED] was a partner in [REDACTED].

¹ The consent form actually covered [REDACTED] through [REDACTED]. However, we are only concerned with the [REDACTED] and [REDACTED] tax years.

In early [REDACTED] the Service issued Final Partnership Administrative Adjustments ("FPAAs") to [REDACTED] for the [REDACTED] and [REDACTED] tax years.² On [REDACTED] [REDACTED] filed a petition in the United States Tax Court challenging the Service's adjustments. [REDACTED]

The Tax Court entered a stipulated decision in the case on [REDACTED]. Neither the Service nor [REDACTED] filed a timely notice of appeal pursuant to I.R.C. Section 7483. Therefore, the Court's decision became final 90 days thereafter on [REDACTED]. See I.R.C. § 7481(a)(1).

On [REDACTED], Large Mid-Size Business attorney, [REDACTED] wrote a letter to Blanche DeArmond. [REDACTED] is a Special Litigation Assistant from [REDACTED] that was assigned to the [REDACTED] case. Ms. DeArmond is a Service employee in the WRAPS Appeals Office TEFRA Processing division in the Fresno Service Center. The letter informs Ms. DeArmond that the [REDACTED] litigation is complete and that the Service should make all of the adjustments set forth in both FPAAs.

For reasons unknown, the [REDACTED] and [REDACTED] files were shuffled between the Fresno Service Center and the Ogden Service Center until [REDACTED]. On [REDACTED] Gloria Kendrick from the Ogden Service Center faxed a TEFRA closing package to you. The closing package contains copies of the stipulated decision entered in the [REDACTED] case and schedules that allocate the adjustments to all of the [REDACTED] partners, including [REDACTED].

As TEFRA Coordinator, you are authorized to make assessments based on the allocations set forth in a TEFRA closing package. However, you stated that you did not receive the TEFRA closing package until after the statute of limitations had expired for assessing partnership items with respect to [REDACTED]'s [REDACTED] and [REDACTED] tax years.³ Therefore, you did not make assessments against [REDACTED].

² It is our understanding that [REDACTED] executed an unrestricted consent for [REDACTED]'s [REDACTED] and [REDACTED] tax years. This explains the long gap between the due dates of the [REDACTED] and [REDACTED] returns and the issuance of the FPAAs.

³ It is our understanding that the Service's computer system indicates that the statute of limitations expired on [REDACTED].

You have asked us to advise you on whether the Form 872-A executed between the Service and [REDACTED] on [REDACTED], extends the statute of limitations with respect to the partnership items claimed on [REDACTED]'s [REDACTED] and [REDACTED] tax returns. Based on the facts as we know them, the Form 872-A does not extend the statute.

LAW AND ANALYSIS

1. The Form 872-A "Special Consent to Extend the Time to Assess Tax" executed by the Service and [REDACTED] in the course of the Service's audit of [REDACTED]'s [REDACTED] and [REDACTED] Forms 1120 does not extend the statute of limitations with respect to partnership items under I.R.C. Section 6229(a).

I.R.C. Section 6501(a) provides generally that the amount of any tax imposed by the Internal Revenue Code shall be assessed within three years after a return is filed ("the 6501 statute"). A taxpayer can extend this assessment period by entering into a written agreement with the Service prior to the expiration of the three year period. I.R.C. § 6501(c)(4).

I.R.C. Section 6229(a) provides a special statute of limitations with respect to partnership items and/or affected items claimed on a taxpayer's return ("the 6229 statute"). The 6229 statute states in relevant part:

Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (or affected item) . . . shall not expire before the date which is 3 years after the later of -

- (1) the date on which the partnership return for such taxable year was filed, or
- (2) the last day for filing such return for such year.

I.R.C. § 6229(a). The 6229 statute may be extended by either an individual partner or by the tax matters partner of the partnership. I.R.C. § 6229(b).

A taxpayer can extend the 6501 statute and the 6229 statute with one agreement. I.R.C. Section 6229(b)(3) provides that any agreement extending the 6501 statute shall apply to the 6229 statute "only if the agreement expressly provides that such agreement applies to tax attributable to partnership items." I.R.C. § 6229(b)(3); Rhone-Poulenc Surfactants & Specialties v. Commissioner, 114 T.C. 533 (2000).

The Form 872-A you provided does not extend the 6229 statute with respect to partnership items. [REDACTED] and the Service executed the Form 872-A for the purpose of extending the 6501 statute during the Service's audit of [REDACTED]'s [REDACTED] and [REDACTED] Forms 1120. The Form 872-A makes no reference to partnership items as required by I.R.C. Section 6229(b)(3) nor does it refer to issues that are even associated with [REDACTED]'s interest in [REDACTED]. Therefore, the Form 872-A you provided to us does not extend the 6229 statute.

2. The statute of limitations under I.R.C. Section 6229(a) may remain open if there was any time remaining on the 6229(a) statute prior to it being suspended under I.R.C. Section 6229(d).

Although the Form 872-A you provided does not extend the 6229(a) statute, time may remain on the statute as a result of I.R.C. Section 6229(d). I.R.C. Section 6229(d) provides that the 6229(a) statute is suspended when the Service mails a FPAA to the tax matters partner of a partnership. I.R.C. § 6229(d). The length of the suspension is dependent on the tax matters partner's actions. If the tax matters partner files a petition in Tax Court challenging the adjustments, the 6229(a) statute is suspended until the decision of the court becomes final plus one year ("the suspension period"). *Id.* At the conclusion of the "suspension period," any time that was remaining on the 6229(a) statute prior to it being suspended is tacked on to the assessment period. See *Aufleger v. Commissioner*, 99 T.C. 109 (1992).

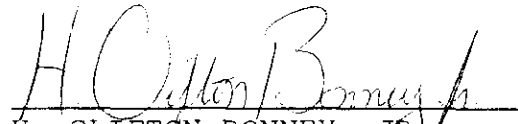
In this case, the 6229(a) statute was suspended until [REDACTED] - one year after the Tax Court decision became final. [REDACTED] filed a petition in Tax Court on [REDACTED] challenging the Service's FPAAs for the [REDACTED] and [REDACTED] tax years. The Tax Court entered its decision on [REDACTED]. This decision became final 90 days later on [REDACTED], because no party filed a timely notice of appeal. See I.R.C. §§ 7481(a)(1) and 7483. One year after that date was [REDACTED].

Once the suspension period ended on [REDACTED], the Service was able to tack on any time that was remaining on the 6229(a) statute prior to it being suspended. See *Aufleger v. Commissioner*, 99 T.C. 109 (1992). Counsel has not received any information to determine whether any time remained on the 6229(a) statute that is eligible for tacking.

We understand that the 6229(a) statute was held open during the audit due to a consent executed between the Service and [REDACTED]. We suggest that you obtain this consent form. If time was remaining on the 6229(a) statute prior to it being suspended

and the consent form did not terminate on the issuance of the FPAAs, the Service may be able to tack additional time onto the assessment period which purportedly expired on [REDACTED].

If you have any further questions, please do not hesitate to contact the undersigned at (415) 744-9225.


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